



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket Number USCG-2023-0015]

RIN 1625-AA08

### Special Local Regulation; Horsepower on the Hudson, Hudson River, Castleton-on-Hudson, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

---

**SUMMARY:** The Coast Guard is establishing a special local regulation on certain waters of the Hudson River near Castleton-on-Hudson, NY, in support of the Horsepower on the Hudson event, reoccurring annually one day in August. This action is necessary to ensure the safety of participants, spectators, and mariners transiting the area from the dangers associated with vessels operating at high speeds during the Horsepower on the Hudson event. This final rule will allow the Coast Guard to enforce vessel movements within two regulated areas in a portion of the Hudson River near Castleton-on-Hudson, NY.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0015 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MSTC Stacy Stevenson, Waterways Management Division, U.S. Coast Guard; telephone 718-354-4197, email D01-SMB-SecNY-Waterways@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port New York
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
LLNR	Light List Number
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On March 17, 2023, the Coast Guard published the Notice of Proposed Rulemaking to establish a permanent Special Local Regulation for the Horsepower on the Hudson event (88 FR 16386). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this high-speed boating event. No comments were received during the comment period, which ended April 17, 2023.

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port New York (COTP) has determined that to ensure the safety of participants, vessels, and the navigable waters in the vicinity of the high-speed area and the spectator area before, during, and after the event. The purpose of this rule is to protect all waterway users, including event participants and spectators.

**IV. Discussion of Comments, Changes, and the Rule**

As noted above, no comments were received on the NPRM published March 17, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a permanent special local regulation to be enforced annually on one day in August. The special local regulation establishes a high-speed area and a spectator zone on the navigable waters of the Hudson River in the vicinity of Castleton-on-Hudson, NY. With this special local regulation, the Coast Guard intends to allow marine traffic to transit via the main navigable channel. The duration of the special local regulation is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled event.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. With this special local regulation, the Coast Guard intends to allow marine traffic to transit via the main navigable channel. In addition, although this rule restricts access to the waters encompassed by the local regulation, the effect of this rule will not be significant because local waterway users will be notified in advance via public Broadcast Notice to Mariners. This is to ensure the special local regulation will result in minimum impact as the main navigation channel will be maintained, allowing vessels to transit Hudson River outside of the high-speed area or the spectator area. Mariners will therefore be able to plan and either transit

through the available transit area or outside the periods of enforcement of the special local regulation. Additionally, mariners may be able to transit the high-speed area or spectator areas with approval from the COTP or designated representative. The entities most likely affected are commercial vessels and pleasure craft engaged in recreational activities.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated areas may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually

and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated area lasting 6 hours that would limit persons or vessels from transiting certain regulated areas during the scheduled event. It is categorically excluded from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add §100.111 to read as follows:

**§ 100.111 Special Local Regulation; Horsepower on the Hudson, Hudson River, Castleton-on-Hudson, NY.**

(a) *Regulated areas.* The regulations in this section apply to the following regulated areas:

(1) *High speed area.* All navigable waters of the Hudson River from Hudson River Lighted Buoy 202 (LLNR 38905) to Hudson River Lighted Buoy 204 (LLNR 38910) east of the navigable channel shoreward outside of the navigational channel.

(2) *Spectator area.* All navigable waters of the Hudson River from Hudson River Lighted Buoy 201 (LLNR 38903) to Hudson River Lighted Buoy 205 (LLNR 38915) west of the navigable channel shoreward outside of the navigational channel.

(b) *Definitions.* As used in this section—

*Designated Representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port New York (COTP) in the enforcement of the Special Local Regulation.

*Participant* means all persons and vessels registered with the event sponsor as a participant in the event.

*Spectator* means any person or vessel including human-powered craft, which is not designated by the sponsor as a support vessel, in the vicinity of the event with the primary purpose of witnessing the event. Spectator vessels can observe the marine event from the designated spectator area.

(c) *Regulations.* (1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas described in paragraph (a) of this section unless authorized by the COTP or their designated representative.

(2) No participant may transit at high-speed inside the high-speed zone when vessels are in or transiting through the navigational channel.

(d) *Enforcement period.* This special local regulation is in effect annually on a date and time published in the Local Notice to Mariners.

(e) *Information broadcasts.* The COTP or a designated representative will inform the public through Local Notice to Mariners and Broadcast Notices to Mariners of the enforcement period for the regulated area as well as any changes in the planned schedule.

Dated: June 1, 2023.

Z. MERCHANT,  
CAPTAIN, U.S. Coast Guard  
Captain of the Port New York

[FR Doc. 2023-12171 Filed: 6/6/2023 8:45 am; Publication Date: 6/7/2023]